IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1397 OF 2004

Honaji Maruti Bamble & anr. ... Appellants

V/s

Namabai Maruti Kengale & anr. ... Respondents

Mr. G.S. Godbole with Jayesh B. Kocheta for the appellants.

CORAM: P.V. KAKADE, J.

DATED: 20TH JULY, 2005

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by the Addl. District Judge, Pune, dated 2.1.2004 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, Jr. Divn., Ghodegaon, Dist. Pune, dated 7.10.2002 decreeing the suit of the plaintiff which was filed for declaration and possession of the suit property.

2. I have heard the learned counsel for the appellants. Perused the record.

3. The plaintiffs had filed the suit for declaration and possession of the property seeking declaration to the effect that the defendants have no concern with the suit property and hence consequent relief of possession was prayed for.

4. The defendants challenged the suit inter-alia submitting that they were in continuous possession of the suit property for more than 12 years and, therefore, had become owners thereof by virtue of the adverse possession and hence the suit was sought to be dismissed.

5. The learned Trial Judge adjudicated the dispute on merits and on the available evidence on record came to the conclusion that the plaintiff has proved his title over the suit property and was entitled for declaration and possession. It was further held that the defendants had failed to establish that his title was perfected by virtue of adverse possession and hence the suit came to be decreed.

The appeal was carried to the lower appellate Court. The learned Addl. District Judge, Pune, after hearing both parties, confirmed the findings recorded by the

Trial Court and dismissed the appeal. Hence the present appeal.

6. At the outset, it must be noted that there is no substantial question of law involved in this appeal. The only question around which the entire dispute revolves is the contention of adverse possession of the defendants. However, both the Courts below have held that mere possession of the suit property for continuous period of more than 12 years since the mutation entry would not automatically perfect the title to show that the defendants had become owner by adverse possession. The learned counsel for the appellants sought to put reliance on the ruling of this Court in the case of **Abasaheb Bali Gharge and anr. v/s Balaji Ramhari Gharge, reported in 1996 (1) Mh.L.J. 209**, pertaining to the adverse possession. However, perusal of the said ruling also shows that the learned Single Judge had not discussed in the facts and circumstances involved in that case an aspect pertaining to hostile possession to the knowledge of the real owner. In the present case also there is no evidence at all to show that the possession of the defendants was hostile to the knowledge of the real owner and, as such, I am inclined to hold that both the Courts below have rightly

concluded that the defendants' plea of adverse possession was not acceptable.

7. Time and again the Apex Court has held that the second appeal cannot be decided on merely equitable grounds. The concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under Sec. 100 of the C.P.C. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at by the last Court of fact, being the first appellate Court. The learned counsel for the appellant submitted that the lower appellate Court had not properly discussed the issue of limitation. However, it is seen from the record that the Trial Court had adequately discussed that issue and he had accepted the said reasoning without further elaboration. The other issues raised by the learned counsel for the appellant appear to be issues of facts and, therefore, cannot be accepted in second appeal.

In the result, the appeal stands dismissed. Consequently, the Civil Application No. 1197 of 2005 also stands dismissed.

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